

REMARKS

In the Claims:

Claims 1-105, 110-119, 121-124, 132-133, 136-141, and 143-146 are cancelled without disclaimer or prejudice to pursuing the inventions of these claims in continuing or divisional applications.

Claims 109, 125, 131, 134, and 142 are amended herein. In particular, claim 109 is amended to clarify that the method of claim 109 is directed to treating a vascular injury by delivering to a blood vessel at the site of injury a transformed vascular smooth muscle or endothelial cell encoding fibroblast growth factor and expressing sufficient amounts of fibroblast growth factor to treat the vascular injury. No new matter is added by amendment of claim 109 and support for the amendment may be found throughout the specification, including at p. 8, II. 11-12; p. 11, II. 13-23; p. 12, II. 17-20; pgs. 13-16; p. 27, II. 21; and p. 30, II. 23.

Claims 125, 131, 134, and 142 are amended such that they no longer depend from a cancelled claim (claims 124, 122, 122, and 115 respectively) but now depend from pending claim 109. Claims 125, 131, 134, and 142 also are amended to clarify that "instilled" refers to delivering cells to the blood vessel. No new matter is added by amendment of claims 125, 131, 134, and 142 and support for these amendments may be found throughout the specification, including at Figures 1 and 2, and pages 7-8, 12, 15-16, 33, and 37-39.

Claims 106-109, 120, 125-131, 134-135, and 142 are pending.

Rejections:

35 U.S.C. § 112, first paragraph – Enablement

Claims 109-112, 114-119, 121-135, and 138-142 stand rejected under 35 U.S.C. § 112, first paragraph, for alleged lack of enablement. Although Applicants respectfully disagree that claims 109-112, 114-119, 121-135, and 138-142 are not enabled, to expedite prosecution and allowance of claims in this application, Applicants have herein cancelled or amended the claims so that they are

commensurate with the scope of enablement identified in the Office action mailed November 21, 2005. In particular, page 3 of the Office action mailed November 21, 2005 reads:

In view of the evidence provided by the second Nabel Declaration, the following scope of enablement has been identified: a method of treating a vascular injury in a mammal comprising delivery to a blood vessel at the site of injury transformed vascular smooth muscle cells or vascular endothelial cells, wherein the transformed vascular cells (i) originate from the mammal or are syngeneic to the mammal, (ii) comprise an exogenous nucleic acid encoding basic fibroblast growth factor, and (iii) express sufficient amounts of basic fibroblast growth factor in the mammal to treat said vascular injury.

Claim 109 is amended herein to recite the above method. Claims 110-112, 114-119, 121-124, 133, and 138-141 are cancelled herein without disclaimer or prejudice to pursuing the inventions of those claims in continuing or divisional applications. Claims 125-131, 134-135 and 142 are amended herein such that they no longer depend from cancelled claims but now depend from amended claim 109. Hence, Applicants submit that pending claims 109, 125-131, 134-135, and 142 are now of a scope that is commensurate with the scope of enablement identified in the Office action mailed November 21, 2005. Therefore, this ground of rejection is overcome and Applicants respectfully request that it be withdrawn.

Double Patenting

The Office action maintains rejection of claims 106-109, 114-118, 121-131, 136, and 142 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 8-14 of U.S. Patent No. 6,203,991.

Applicants respectfully disagree with this ground of rejection, but as stated previously, to expedite allowance of pending claims 106-109, 120, 125-131, 134-135, and 142, Applicants file herewith a terminal disclaimer disclaiming any term

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of any patent issuing from this application that extends beyond the patent term of U.S. Patent No. 6,203,991.

CONCLUSION

Pending claims 106-109, 120, 125-131, 134-135, and 142 are patentable. Applicants respectfully request the Examiner grant allowance of these claims. The Examiner is invited to contact the undersigned attorney for Applicants via telephone if such communication would expedite allowance of these claims.

Respectfully Submitted,


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